

**TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE**



**FISCAL NOTE**

**SB 498 - HB 813**

March 7, 2011

**SUMMARY OF BILL:** Creates a Class D felony offense for a person knowingly to possess material that includes an adapted or modified depiction of an identifiable minor engaged in sexual activity or simulated sexual activity that is patently offensive. Elevates the offense to a Class C felony if the number of individual materials possessed is more than 50 and to a Class B felony if the number exceeds 100. Creates a Class C felony offense for a person knowingly to promote, sell, distribute, transport, purchase, or exchange such material, or possess with the intent to promote, sell, distribute, transport, purchase, or exchange such material. Elevates the offense to a Class B felony if the number of materials involved exceeds 25. Authorizes separate counts for each individual image, picture, film, or other pictorial representation. Venue lies in Tennessee if the conduct occurred in Tennessee or if the minor depicted in the material resides in Tennessee. Adds these offenses to the list of violations for which a District Attorney General may seek a temporary restraining order or injunction.

**ESTIMATED FISCAL IMPACT:**

**Increase State Expenditures - \$129,000/Incarceration\***

**Assumptions:**

- Sexual exploitation of a minor is currently a Class D felony. Possession of 50 or more individual images, materials, or combination of images and materials raises the offense to a Class C felony. Possession of more than 100 such items raises the offense to a Class B felony.
- According to the Department of Correction (DOC), there has been an average of 12 admissions in each of the past two years for the Class C and Class B felony offenses of sexual exploitation of a minor. DOC assumes a 10 percent increase (1) in the number of admissions where the offense involves more than 50 images, resulting in one additional Class C felony each year. According to DOC, the average operating cost per offender per day for calendar year 2011 is \$60.62. The average post-conviction time served for a Class C felony offense is 3.23 years (1,179.76 days) at a cost of \$71,517.05 (\$60.62 x 1,179.76 days).

- According to DOC, there has been an average of seven admissions in each of the past 10 years for the Class D felony offense of sexual exploitation of a minor. DOC assumes a 10 percent increase (0.70) in the number of admissions where the offense involved less than 50 images, resulting in one additional Class D offender every three years. The average post-conviction time served for a Class D felony is 1.97 years (719.54 days). The annualized time served per Class D felony conviction is 237.45 days (0.33 annual number of convictions x 719.54 days). The annualized cost per conviction is \$14,394.22 (\$60.62 x 237.45 days).
- According to DOC, there has been an average of two admissions in each of the past three years for the Class B felony offense of sexual exploitation of a minor. DOC assumes a 10 percent increase (0.20) in the number of admissions where the offense involved less than 25 images, resulting in one additional Class C felony admission every four years. The annualized time served per Class C felony conviction is 294.94 days (0.25 annual number of convictions x 1,179.76 days). The annualized cost per conviction is \$17,879.26 (\$60.62 x 294.94 days).
- According to DOC, there has been an average of two admissions in each of the past 10 years for the Class C felony offense of aggravated sexual exploitation of a minor. DOC assumes a 10 percent increase (0.20) in the number of admissions where the offense involved more than 25 images, resulting in one additional admission every five years. The annualized time served per Class B felony conviction is 413.46 days (0.20 annual number of convictions x 2,067.32 days). The annualized cost per conviction is \$25,245.81 (\$60.62 x 413.46 days).
- The total additional operating cost is \$129,036.34 (\$71,517.05 + \$14,394.22 + \$17,879.26 + \$25,245.81).
- Any impact on the caseloads of the court system can be accommodated within existing judicial resources without an increased appropriation or reduced reversion.

*\*Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



James W. White, Executive Director

/lsc